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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN JOSE DIVISION**  
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13 **STANDING ORDER RE PRETRIAL**  
14 **PREPARATION**  
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18 Good cause therefor appearing, IT IS HEREBY ORDERED that the following  
19 requirements and procedures shall apply in all cases scheduled for trial before the undersigned  
20 judge.  
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22 **Requirements Prior to the Pretrial Conference.**

23 Prior to the pretrial conference, counsel (or parties appearing pro se) shall comply in all  
24 respects with the following requirements:

25 **(1) Required Meeting and Disclosure Prior to Pretrial Conference.** At least twenty  
26 (20) days before the Pretrial Conference, lead counsel who will try the case shall meet and confer  
27 with respect to:

28 **(A) Preparation and content of the joint pretrial conference statement.**

1 (B) Preparation, exchange and lodgment of pretrial materials included in this  
2 order.

3 (C) Settlement of the action.

4 **(2) Pretrial Conference Statement.** Unless otherwise ordered, not less than ten (10)  
5 court days prior to the Pretrial Conference, the parties shall file a joint pretrial conference  
6 statement containing the following information:

7 (A) The Action.

8 (1) Substance of the Action. A brief description of the substance of  
9 the issues that remain to be decided.

10 (2) Relief Sought. For civil actions, a detailed statement of all the relief  
11 sought, particularly itemizing all elements of damages claimed as well as  
12 witnesses, documents or other evidentiary material to be presented  
13 concerning the amount of such damages.

14 (B) The Factual Basis of the Action.

15 (1) Undisputed Facts. A plain and concise statement of all relevant facts  
16 not reasonably disputable, as well as facts to which parties will stipulate  
17 for incorporation into the trial record without the necessity of supporting  
18 testimony or exhibits.

19 (2) Disputed Factual Issues. A plain and concise statement of all disputed  
20 factual issues that remain to be decided.

21 (3) Agreed Statement. A statement assessing whether all or part of the  
22 action may be presented upon an agreed statement of facts.

23 (4) Stipulations. A statement of stipulations requested or proposed for  
24 pretrial or trial purposes.

25 (C) Disputed Legal Issues.

26 (1) Points of Law. Without extended legal argument, a concise statement  
27 of each disputed point of law concerning liability or relief, citing  
28 supporting statutes and decisions. Unless otherwise ordered, parties

1 should cite to briefs served and lodged with the Court setting forth  
2 briefly the nature of each party's contentions concerning each disputed  
3 point of law, including procedural and evidentiary issues.

4 (2) Proposed Conclusions of Law. If the case is to be tried without a jury,  
5 unless otherwise ordered, parties should provide proposed conclusions of  
6 law.

7 **(3) Trial Preparation.**

8 (1) Witnesses to be Called. A list of all witnesses likely to be called at  
9 trial, other than solely for impeachment or rebuttal, together with a brief  
10 statement following each name describing the substance of the testimony  
11 to be given.

12 (2) Exhibits, Schedules and Summaries. A list of all documents and other  
13 items to be offered as exhibits at trial, other than solely for  
14 impeachment or rebuttal, with a brief statement following each, describing  
15 its substance or purpose and the identity of the sponsoring witness. Unless  
16 otherwise ordered, parties should indicate any objections to the receipt in  
17 evidence of exhibits and materials lodged with the Court and that  
18 counsel have conferred with respect to such objections. Three sets of  
19 premarked, joint exhibits, numbered consecutively starting with number  
20 one (1), shall be delivered to the Courtroom Deputy Clerk on or before the  
21 date of the Pretrial Conference. (In cases involving a large number of  
22 exhibits, exhibits should be placed in binders).

23 (3) Unless otherwise ordered, if the trial is to be a jury trial, proposed jury  
24 instructions, and proposed content of a jury questionnaire and proposed  
25 voir dire questions should be submitted to the Court not later than seven  
26 (7) court days prior to trial. If the parties cannot agree as to these materials,  
27 Counsel shall state that they have met and conferred for the purpose of  
28 resolving their differences.

(4) Estimate of Trial Time. An estimate of the number of court hours in fractions thereof for the direct examination and cross-examination of each witness identified in the witness list submitted.

(5) Use of Discovery Responses. A statement as to any intended use, other than solely for impeachment or rebuttal, of excerpts from depositions, interrogatory answers, or responses to requests for admission. Counsel shall indicate any objections to use of such materials and that they have conferred with respect to such objections.

(6) Further Discovery and Motions in Limine. A statement of all remaining discovery or any motions in limine shall be filed not later than seven (7) days prior to the Pretrial Conference.

**(4) Trial Alternatives and Options.**

(1) Settlement and Discussion. Without revealing the substance of the parties settlement positions, a statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

(2) Consent to Trial Before a Magistrate Judge. A statement as to whether reference of all or part of the action to a master or magistrate judge is feasible, including whether the parties consent to a court or jury trial before a magistrate judge, with appeal directly to the Ninth Circuit.

(3) Amendments, Dismissals. A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses.

**(5) Miscellaneous.**

Any other subjects relevant to the trial of the action or to its just, speedy and inexpensive determination. The assigned judge may make such pretrial orders at or following the pretrial conference as may be appropriate, and such orders shall control the

subsequent course of the action.

**Agenda for the Pretrial Conference**

At the pretrial conference, the Court will:

1. Set a schedule for the receipt of opposition to and determination of any contested motions in limine or other pretrial motions;
2. Allocate a fixed number of hours to each side for the direct examination and cross-examination of witnesses;
3. Set specific dates and times when the trial will be in session;<sup>1</sup>
4. For jury trials, determine the number of prospective jurors to be summoned, the number of jurors to be seated and whether a jury questionnaire will be used to assist in jury selection;
5. Consider any other trial management matter which is likely to promote fair and efficient resolution of the case.

Questions concerning provisions of this order should be directed to the Courtroom Deputy Clerk at (408) 535-5166.

DATED: 5/25/06

  
JEREMY FOGEL  
United States District Judge

<sup>1</sup> Jury selection normally commences at 1:30 PM on the Friday on which the trial is set. The Court normally conducts trials between 9:00 AM and 4:30 PM Monday, Tuesday and Thursday and between 10:00 AM and 4:30 PM Wednesday.